Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-798

LEONARD GLIATTA,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No.

LEONARD GLIATTA,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, Leonard Gliatta, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in Case Number 78-5106, United States of America appellee v. Leonard Gliatta appellant.

OPINION BELOW

The opinion of the United States Court of Appeals in the above case is not reported as yet, but appears in Appendix A herein.

JURISDICTION

The Opinion of the United States Court of Appeals, for the Fifth Circuit was entered on September 14, 1978, Appendix A to this Petition. A timely Petition for Rehearing was filed herein and was denied on October 16, 1978. Appendix B. The jurisdiction of this Court is invoked pursuant to Title 28 United States Code 1254(1).

QUESTION PRESENTED

I

Whether the District Court had jurisdiction to try petitioner when the offenses with which he was charged, were committed within the limits of a Federal enclave, and the United States had not secured a deed of cession of jurisdiction from the State of Florida and formally accepted same?

STATEMENT OF THE CASE

Petitioner, was charged with certain offenses committed within the confines of the General Mail Facility, at Miami, Florida, by Federal Officers, on January 4, 1978. Trial was set for January 12, 1978. Petitioner filed his motion to dismiss, based on want of jurisdiction by the government. Petitioner's motion was denied, the District Court found him guilty on January 12, 1978 and entering judgment imposed penalties in the form of a fine.

Appeal was taken to the Court of Appeals for the Fifth Circuit and the Court on September 14, 1978 entered its opinion affirming the District Court. A timely petition for rehearing was filed and the Court denied same on October 16, 1978.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution:

Article I, Section 8, Cl. 17:

"To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; — and"

Article I, Section 8, Cl. 18:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

Article I, Section 8, Cl. 7:

"To establish post offices and post roads;"

Article IV, Section 3, Cl. 2:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular States.

STATUTORY PROVISIONS INVOLVED

Title 40, United States Code 255:

". . . . Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may

deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

Title 40, United States Code 318b:

§ *318b. Same; application for protection; detail of special police; utilization of Federal law-enforcement agencies*

Upon the application of the head of any department or agency of the United States having property of the United States under its administration and control and over which the United States has acquired exclusive or concurrent criminal jurisdiction, the Administrator of General Services or officials of the Administration duly authorized by him are authorized to detail any such special policemen for the protection of such property and if he deems it desirable, to extend to such property the applicability of any such regulations and to enforce the same as set forth in sections 318-318c of this title; and the

Administrator of General Services or official of the Administration duly authorized by him, whenever it is deemed economical and in the public interest, may utilize the facilities and services of existing Federal law-enforcement agencies, and, with the consent of any State or local agency, the facilities and services of such State or local law-enforcement agencies.

Title 18, United States Code 7(3):

§ 7. *Special maritime and territorial jurisdiction of the United States defined*

CRIMES

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

91 Stat. 356, Section 610:

Funds made available by this or any other Act to (1) the General Services Administration * * * and (2) the "Postal Service Fund" * * *, shall be available for employment of guards for all buildings and areas owned or occupied by the United States or the Postal Service and

under the charge and control of the General Services Administration or the Postal Service, and *such guards shall have, with respect to such property, the powers of special policemen provided by [40 U.S.C. 318,], but shall not be restricted to certain Federal property as otherwise required by the proviso contained in said section,* and, as to property owned or occupied by the Postal Service, the Postmaster General may take the same actions as the Administrator of General Services may take under the provisions of [40 U.S.C. 318a, 318b] attaching thereto penal consequences under the authority and within the limits provided in [40 U.S.C. 318c].

Florida Statute 6.04:

604 Jurisdiction over such lands; how ceded to the United States. — Whenever the United States shall contract for, purchase or acquire any land within the limits of this state for the purposes aforesaid, in either of the modes above mentioned and provided, or shall hold for such purposes lands heretofore lawfully acquired or reserved therefor, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, the Governor of this state may, upon application made to him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of said reservation, purchase, contract, or ac-

quisition of record, describing the land sought to be ceded by convenient metes and bounds, thereupon, in the name and on behalf of this state, cede to the United States exclusive jurisdiction over the land so reserved, purchased, or acquired and sought to be ceded; the United States to hold, use, occupy, own, possess, and exercise said jurisdiction over the same for the purposes aforesaid, and none other whatsoever; provided, always, that the consent aforesaid is hereby given and the cession aforesaid is to be granted and made as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States in and over the land or lands so to be ceded, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state, or of any of the courts or judicial officers thereof may be executed by the proper officers thereof, upon any person amenable to the same, within the limits and extent of lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States security to their property within said limits and extent, and exemption of the same, and of said lands from any taxation under the authority of this state while the same shall continue to be owned, held, used and occupied by the United States for the purposes above expressed and intended, and not otherwise.

39 Code of Federal Regulations 232.6(k)(1)(O)(2):

(k) *Vehicular and pedestrian traffic.*

(1) Drivers of all vehicles in or on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of security force personnel, other authorized individuals, and all posted traffic signs.

(2) Whoever shall be found guilty of violating the rules and regulations in this section while on property under the charge and control of the Postal Service is subject to fine of not more than $50 or imprisonment of not more than 30 days, or both. *Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or* regulations of any State and local laws and regulations applicable to any area in which the property is situated. (Emphasis added)

(p) *Enforcement.* (1) Members of the U.S. Postal Service security force shall exercise the powers of special policemen provided by 40 U.S.C. 318 and shall be responsible for enforcing the regulations in this section in a manner that will protect Postal Service property.

REASONS FOR GRANTING THE WRIT

The Court of Appeals, in affirming the District Court, states on page 6987 of the Opinion (Appendix

A, p. 6a) that: "The government concedes that it did not, as of January 4, 1978, have exclusive or concurrent jurisdiction over the postal facility at which defendant's conduct occurred". Since this was conceded by the government, petitioner submits that this was also the finding of the Court.

The opinion then cites Section 610, 91 Stat. 356, an appropriations act, as being the basis for the government's prosecution of petitioner.

Article 1, Section 8, Cl. 17 prescribes a constitutional process by which the government can secure jurisdiction to try a defendant for offenses committed on Federal Enclaves. Title 40 U.S.C. 255 incorporates same and adds the additional element, that the government must formally accept the cession of jurisdiction from the state. In *Adams v. United States*, 319 U.S. 312, 63 S.Ct. 1122, 87 L.Ed. 1421, in response to certified questions from the Court of Appeals for the Fifth Circuit, this court replied that if the constitutional and statutory mandates were not met, the District Court had no jurisdiction to try the defendant, and Adams was discharged.

The following cases support these propositions: *Bowen v. Johnston*, 306 U.S. 19, 59 S.Ct. 442; *United States v. Unzuenta*, 281 U.S. 133, 50 S.Ct. 284; *Surplus Trading Co. v. Cook*, 281 U.S. 647, 50 S.Ct. 455; *James v. Dravo Contracting Co.*, 302 U.S. 134, 58 S.Ct. 208; *United States v. Pate*, 393 F.2d 44, cert. denied, 89 S.Ct. 209; and even a

Supreme Court of Florida case, *IBM v. Vaughn*, 98 So.2d 747, which while a civil case upholds the basic question of jurisdiction and recites that the government in that case had met the constitutional mandate and secured a cession of jurisdiction under Florida Statute 6.04.

Petitioner respectfully submits, that, *the passage of an appropriations act cannot abrogate the constitution*, and cannot confer the power to prosecute petitioner, when the requirements imposed on the government, by itself, in the constitution and its statutes have not been met.

It is further submitted, that there is no difference between this case and *Adams*, and that as the District Court was without jurisdiction to try Adams, it was without jurisdiction to try Gliatta here.

In regard to the other positions taken in the opinion in support of the prosecution of the petitioner, to wit: The Postal Powers, Article 1, Section 8, Cl. 7; the necessary and proper clause, Article 1, Section 8, Cl. 18; and the Property Clause, Article 4, Section 3, Cl. 2; petitioner submits as follows:

There is no conflict here, between Article 1, Section 8, Cl. 17 and the Postal Powers clause, the Necessary and Proper clause and the Property Clause, unless it is being asserted that these latter three provisions abrogate Article 1, Section 8, Cl. 17, render it meaningless and the *Adams* decision rendered by this Court is no longer in force. In *Adams*, the Secretary of

War, in time of war, 1943, was surely acting under the War Powers, and neither he, nor the Department of Justice, nor this Court, found compliance with the constitutional mandate for securing criminal jurisdiction, *to be a byzantine process, but rather found it to be a constitutional process.*

There is no dimunition of governmental power under these clauses by Article 1, Section 8, Cl. 17, there is simply a prescribed constitutional method by which they can be exercised in situations where the acts occur on a Federal Enclave. The government here could have secured a cession of jurisdiction here and accepted it in compliance with its own statute. In fact the statute, 40 U.S.C. 255, envisions situations in which the government agency for its own reasons whatever, might not want to assume jurisdiction, and therefore says that it will not have it unless it formally accepts it after cession.

The case, *Kleppe v. New Mexico,* 426 U.S. 529, 96 S.Ct. 2285 does not apply here, if only because it was essentially a civil dispute between the government over the control of wild burros, not a criminal prosecution of a citizen before the Courts of the United States. We are not dealing here with a conflict between a state law and a Federal law, where the supremacy clause would come into play. Petitioner here, is asserting a provision of the U.S. Constitution, well supported by the decisions of this Court, in which the government itself limits its own jurisdiction and power to act through its District

Courts, unless it has complied with the constitution and its own statutes.

CONCLUSION

Petitioner submits that his petition for writ of certiorari should be granted, that the Judgment of the Court of Appeals, affirming the District Court should be set aside, and the cause remanded with directions to set aside the conviction of the petitioner for want of jurisdiction in the District Court.

Respectfully submitted,

W. J. FOLEY
150 S.E. 2nd Avenue
Miami, Florida 33131
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, W. J. Foley, attorney for petitioner in the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, and a member of the bar of the Supreme Court of the United States, hereby certify that on the ____day of November, 1978, I served three copies of the foregoing petition for writ of certiorari on Hon. Wade H. McCree, Jr., Solicitor General of the United States, Department of Justice, Washington, D.C., 20530; and one copy on Hon. Peter Koste, Assistant United States Attorney, Office of the United States Attorney, Ainsley Building, Miami, Florida, by depositing same in the United States Mail, postage prepaid, and properly addressed.

I further certify that all parties required to be served have been served.

W. J. FOLEY

APPENDIX A

UNITED STATES of America,
Plaintiff-Appellee,

versus

Leonard GLIATTA,
Defendant-Appellant.

No. 78-5106

Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Sept. 14, 1978.

Appeal from the United States District Court for the Southern District of Florida.

Before BROWN, Chief Judge, COLEMAN and VANCE, Circuit Judges.

JOHN R. BROWN, Chief Judge:

Proving that haste does make waste, Leonard Gliatta finds himself convicted on two counts for his improper

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* Rule 18, 5 Cir.; see *Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al.*, 5 Cir. 1970, 431 F.2d 409, Part I.

conduct on postal office property. Little did he realize that crossing the yellow stripe would bring him face to face with the strong arm of federal criminal law or that his plight would send us to the Constitution. Alas, the Constitution does not extricate him and we affirm.

Prior to reporting for work on January 4, 1978, at the general mail facility located at 2200 Northwest 72nd Avenue, Miami, Florida, Gliatta drove into the employees' parking lot to park his car. In the course of doing so, he was observed by a postal security officer to cross a solid yellow line into the opposite lane of traffic and pass another vehicle at an excessive rate of speed. Gliatta was stopped by the security officer and cited for violating 39 C.F.R. § 232.6(k), which regulates the operations of motor vehicles on postal property.[1] While the officer was still writing the citation, Gliatta — perhaps anxious to end the incident as quickly as possible and begin his day's work — got back into his car, and in spite of the officer's orders to stop, drove it a short distance into an empty parking space. For this action, Gliatta was charged with violating 39 C.F.R. § 232.6(d), which provides that all persons on postal

1 The pertinent portion of 39 C.F.R. § 232.6(k) reads:
Drivers of all vehicles in or on [postal] property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of security force personnel, other authorized individuals, and all posted traffic signs.

property shall comply with the directions of security force personnel.[2]

In a non-jury trial eight days later, the United States District Court convicted Gliatta on both charges and fined him $50 for each violation. Gliatta appeals his convictions on the sole ground that the Court was without jurisdiction to try him for the offenses committed at the Miami postal facility.[3] We find the appellant's jurisdictional argument unavailing.

The Exclusive Jurisdiction Red Herring

Appellant's argument takes the following form (reconstructing it for ease of presentation). (1) The government's jurisdiction to try anyone for violations of the postal regulations embodied in 39 C.F.R. § 232.6 depends upon the government's possessing exclusive or concurrent jurisdiction over the postal premises in question. (2) The government had not, as of January 4, 1978, acquired exclusive or concurrent jurisdiction over the postal facility located at 2200 Northwest 72nd Avenue, Miami, Florida. (3) The government is therefore without jurisdiction to try him for the alleged violations committed at that facility on January 4, 1978.

2 All persons in and on [postal] property shall comply with official signs of a prohibitory or directory nature, and with the directions of security force personnel or other authorized individuals.
39 C.F.R. § 232.6(d).

3 Before trial, Gliatta moved to dismiss the charges for want of jurisdiction, but the District Court denied the motion.

The crucial step in the appellant's argument is the initial one. At first blush, the appellant's proposition appears correct. 39 C.F.R. § 232.6(p) provides that "[m]embers of the U. S. Postal Service security force shall exercise the powers of special policemen provided by 40 U.S.C. 318." Under the proviso to 40 U.S.C. § 318, the jurisdiction of such special policemen is "restricted to Federal property over which the United States has acquired exclusive or concurrent criminal jurisdiction."[4] To secure exclusive or concurrent jurisdiction of property within a state's political boundaries, the federal government must either (1) comply with the requirements of Art. I, § 8, cl. 17 of the Constitution,[5] or (2) obtain a cession of legislative authority from the State in which the land is located.[6] Whichever course is followed, there has existed since 1940 the additional requirement, imposed by Congress, that the United States give its affirmative assent to the transfer of exclusive or concurrent jurisdiction before such jurisdiction becomes effective. *See* 40 U.S.C. § 255.

4 In its entirety, 40 U.S.C. § 318 provides that

> The Administrator of General Services or officials of the Administration duly authorized by him may appoint uniformed guards of said administration as special policemen without additional compensation for duty in connection with the policing of public buildings and other areas under the jurisdiction of the Administrator of General Services. Such special policemen shall have the same powers as sheriffs and constables upon such Federal property to enforce the laws enacted for the protection of persons and property, and to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rules and regulations made and promulgated by the Administrator or such duly authorized officials of the Administration for the property under their jurisdiction: *Provided*, That the jurisdiction and policing powers of such special policemen shall not extend to the service of civil process and shall be restricted to Federal property over which the United States has acquired exclusive or concurrent criminal jurisdiction.

The concept of "exclusive or concurrent" federal jurisdiction, for purposes of 40 U.S.C.A. § 318, is the same as exclusive or concurrent jurisdiction under Art. I, § 8, cl. 17 of the Constitution, *see* note 5, *infra*.

5 Article I, § 8, cl. 17 gives Congress the power "[t]o exercise exclusive Legislation in all Cases whatsoever * * * over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings." The term "exclusive Legislation" is the equivalent of "exclusive jurisdiction." *Surplus Trading Co. v. Cook*, 1930, 281 U.S. 647, 652, 50 S.Ct. 455, 458, 74 L.Ed. 1091.

Where federal jurisdiction over a federal enclave is exclusive, the state retains no legislative or political authority over that property. But, despite the language of the Constitutional clause, federal jurisdiction may be concurrent instead of exclusive: in giving its consent, the state may reserve to itself such local jurisdiction as it desires provided it does not interfere with the performance of federal governmental functions. *James v. Dravo Contracting Co.*, 1937, 302 U.S. 134, 146-49, 58 S.Ct. 208, 215-16, 82 L.Ed. 155.

6 In order to acquire land within a state by purchase or by condemnation, the federal government does not need the consent of the state. *Kohl v. United States*, 1876, 91 U.S. 367, 371, 23 L.Ed. 449. Absent the state's consent, however, the United States does not obtain exclusive or concurrent jurisdiction. Instead it is simply an ordinary proprietor. *See Surplus Trading Co. v. Cook*, 1930, 281 U.S. 647, 650, 50 S.Ct. 455, 458, 74 L.Ed. 1091. But even in this circumstance, the United States may secure jurisdiction over the purchased or condemned land through "a cession of legislative authority and political jurisdiction" from the state, *see Fort Leavenworth R.R. Co. v. Lowe*, 1885, 114 U.S. 525, 541-42, 5 S.Ct. 995, 1001, 29 L.Ed. 264, and the cession may be either complete or qualified. *See Paul v. United States*, 1963, 371 U.S. 245, 264-65, 83 S.Ct. 426, 437-38, 9 L.Ed.2d 292.

Adams v. United States, 1943, 319 U.S. 312, 63 S.Ct. 1122, 87 L.Ed. 1421, aptly illustrates the consequences of a failure by the government to "perfect" its exclusive or concurrent jurisdiction. In *Adams*, the government attempted to prosecute three soldiers under 18 U.S.C. § 457 (now codified at 18 U.S.C. § 2031), which made it a federal crime to commit rape "within the special maritime and territorial jurisdiction of the United States," which includes "[a]ny lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof," 18 U.S.C. § 451 (now codified at 18 U.S.C. § 7(3)). The alleged rape occurred within the confines of a government military camp, over which, at the time of the crime, the government had not accepted or acquired exclusive or concurrent jurisdiction from the State of Louisiana. The Supreme Court held that in these circumstances the trial court was without jurisdiction to try and sentence the defendants for the alleged rape. *See also United States v. Pate*, 7 Cir., 1968, 393 F.2d 44, *cert. denied*, 1968, 393 U.S. 890, 89 S.Ct. 209, 21 L.Ed.2d 168; *DeKalb County, Georgia v. Henry C. Beck Co.*, 5 Cir., 1967, 382 F.2d 992.

The government concedes that it did not, as of January 4, 1978, have exclusive or concurrent jurisdiction over the postal facility at which appellant's conduct occurred. The appellant therefore argues, relying on *Adams*, that we must reverse his convictions and dismiss the charges for lack of jurisdiction. And so we would, but . . . .

Sunk By Appropriations

Unfortunately the appellant overlooks the Treasury, Postal Service, and General Government Appropriations Act for 1978, Pub.L. No. 95-81, 91 Stat. 341, which was enacted some six months before the conduct in question. Section 610 of that Act, 91 Stat. 356, provides

> Funds made available by this or any other Act to (1) the General Services Administration * * * and (2) the "Postal Service Fund" * * *, shall be available for employment of guards for all buildings and areas owned or occupied by the United States or the Postal Service and under the charge and control of the General Services Administration or the Postal Service, and *such guards shall have, with respect to such property, the powers of special policemen provided by [40 U.S.C. 318], but shall not be restricted to certain Federal property as otherwise required by the proviso contained in said section*, and, as to property owned or occupied by the Postal Service, the Postmaster General may take the same actions as the Administrator of General Services may take under the provisions of [40 U.S.C. 318a, 318b] attaching thereto penal consequences under the authority and within the limits

provided in [40 U.S.C. 318c]. [Emphasis added.][7]

By enacting § 610, Congress provided a mechanism by which the United States, or its instrumentality the United States Postal Service, could maintain order on postal facilities and thereby facilitate mail service without resorting to the somewhat byzantine process of securing exclusive or concurrent federal jurisdiction over such property.[8] Thus, by virtue of § 610, the principle of *Adams* does not control this case.

But One Constitutional Leg
To Stand On?

The foregoing ought to be sufficient to conclude this case and the chain of events triggered by Leonard

7 40 U.S.C. § 318 is set forth in note 4, *supra*.

The authority granted the Postmaster General by § 610 of the Appropriations Act with respect to property owned or occupied by the Postal Service is defined by 40 U.S.C. §§ 318a-318c as follows: (1) "to make all needful rules and regulations for the government of the Federal property" under the "charge and control" of the Postal Service, "and to annex to such rules and regulations such reasonable penalties, within the limits prescribed in [40 U.S.C. § 318c], as will insure their enforcement," *see* 40 U.S.C. § 318a; (2) to enlist, when deemed economical and in the public interest, the facilities and services of both existing federal law-enforcement agencies and, with their consent, state or local law-enforcement agencies, *see* 40 U.S.C. § 318b; and (3) to penalize violations of rules and regulations promulgated pursuant to § 318a with fines of no more than $50 or imprisonment of no more than 30 days, *see* 40 U.S.C. § 318c.

8 Section 610 is not unique to the Treasury, Postal Service, and General Government Appropriations Act for 1978. Congress included similar or identical provisions in Appropriations Act for each year since 1972.

Gliatta's inordinate haste on the afternoon of January 4th. But the appellant seems to urge yet another jurisdictional flaw. His argument, although somewhat inchoate, at least deserves our response. The appellant suggests that even if the United States has statutory jurisdiction to enforce the postal regulations which he violated, it lacks power under the Constitution to exercise jurisdiction in the manner in which it did in this case. The theory apparently underlying this suggestion is that subject matter jurisdiction to enforce regulations relating to government owned and operated postal facilities can be exercised only under the restrictive terms of Art. I, § 8, cl. 17 of the Constitution.[9]

The federal government is not, however, hamstrung by the Exclusive Jurisdiction Clause when it seeks to enact and enforce regulations pertaining to postal service and government property. The Post Office Clause, Art. I, § 8, cl. 7, grants Congress the power "[t]o establish Post Offices and post Roads." This clause has been construed expansively to encompass all sorts of measures relating to the safe and efficient transmission of the mail, *see, e.g., Ex parte Jackson*, 1878, 96 U.S. 727, 24 L.Ed. 877; *In re Rapier*, 1892, 143 U.S. 110, 12 S.Ct. 374, 36 L.Ed. 93, and, in conjunction with the Necessary and Proper Clause, Art. I, § 8, cl. 18, is more than adequate constitutional authority for the postal regulations which Gliatta has violated.

9 *See* note 5, *supra*.

Moreover, the Property Clause, Art. IV, § 3, cl. 2, gives Congress the power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." The Supreme Court has explicitly held that the presence or absence of federal jurisdiction under the Exclusive Jurisdiction Clause "has nothing to do with Congress' powers under the Property Clause." *Kleppe v. New Mexico*, 1976, 426 U.S. 529, 542-43, 96 S.Ct. 2285, 2293, 49 L.Ed.2d 34.[10] Beyond doubt, the Property Clause authorizes the enactment and enforcement of regulations which, like those at issue in this case, are designed to maintain safety and order on government property. *See United States v. Brown*, 8 Cir., 1977, 552 F.2d 817, 821-22, *cert. denied*, 1977, 431 U.S. 949, 97 S.Ct. 2666, 53 L.Ed.2d 266; *Robbins v. United States*, 8 Cir., 1922, 284 F. 39; *United States v. Matherson*, E.D. N.Y., 1973, 367 F.Supp. 779, *aff'd mem.*, 2 Cir., 1974, 493 F.2d 1399; *see also McVay v. United States*, 5 Cir., 1973, 481 F.2d 615.

Crossing the yellow stripe, driving with excessive speed, ignoring the officer's commands, on property that blended into Miami property, turned out to be, not Florida, but Federal offenses for which appellant was fairly tried, convicted, and sentenced.

AFFIRMED.

10 "Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause." 426 U.S. at 543, 96 S.Ct. at 2293.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 78-5106

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus

LEONARD GLIATTA,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

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ON PETITION FOR REHEARING
(October 16, 1978)

Before BROWN, Chief Judge, COLEMAN and VANCE, Circuit Judges

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:
/s/ JOHN R. BROWN
Chief Judge